

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ANDREW ZIMMERMAN and KELLY :
ZIMMERMANN, as class representatives for the :
certified ZIMMERMAN ACTION CLASSES, :
 :
Plaintiffs, :
 : Civil Action
v. : No. 09-30194-MAP
 :
EPSTEIN BECKER AND GREEN, P.C., PAUL M. :
KAPLAN, ESQ., SHEPPARD, MULLIN, RICHTER : **ORAL ARGUMENT**
& HAMPTON, LLP, BRIAN J. DAVIS, P.C., : **REQUESTED**
BRIAN J. DAVIS, ESQ., P.C., BRIAN J. DAVIS, :
ESQ., SPENCE & DAVIS, LLP, DOUGLAS D. :
VIVIANI, P.C., and DOUGLAS D. VIVANI, ESQ., :
 :
Defendants. :
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DEFENDANT PAUL M. KAPLAN'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 9(b), 12(b)(1), and 12(b)(6), Paul M. Kaplan, Esq., moves to dismiss all counts of Plaintiffs' Complaint as alleged against him (i.e. Counts One and Three), on the grounds that, *inter alia*, the Court lacks subject matter jurisdiction to hear Count One, Plaintiffs' claims are time-barred, Plaintiffs fail to state claims upon which relief can be granted, and Plaintiffs fail to plead a violation of the Credit Repair Organizations Act, 15 U.S.C. §§ 1679 et seq. ("CROA") with the particularity required by Fed. R. Civ. P. 9(b).

The grounds for this Motion are more fully set forth in the accompanying Memorandum Of Law.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Mr. Kaplan respectfully requests a hearing on this Motion.

Dated: February 12, 2010
Boston, Massachusetts

Respectfully submitted,

/s/ Kurt Wm. Hemr

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Counsel for Defendant Paul M. Kaplan, Esq.

LOCAL RULE 7.1 CERTIFICATION

The undersigned hereby certifies that Mr. Kaplan's counsel has conferred with Plaintiffs' counsel and have attempted in good faith to resolve or narrow the issues involved in this Motion.

/s/ Kurt Wm. Hemr

Kurt Wm. Hemr

CERTIFICATE OF SERVICE

I, Kurt Wm. Hemr, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on February 12, 2010.

Dated: February 12, 2010

/s/ Kurt Wm. Hemr

Kurt Wm. Hemr